IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 489 OF 2007
IN
STAMP NUMBER MAIN NO. 1327 OF 2007

NATIONAL INSURANCE CO. LTD., VASCO DA GAMA GOA. ... Applicant

Versus

SHRI SABER SHEIKH AND 3 ORS., ... Respondents

Mr. E. Afonso, Advocate for the applicant.
Mr. J. Godinho,Advocate for the respondents No.3&4.

Coram:- R. S. MOHITE, J.

Date:- 21st September, 2007

P.C.

Heard the Advocate for the appellant and Advocate for the respondents No. 3 & 4 who are the owner and the driver of the vehicle. This is an application for condonation of 623 day's delay in filing the first appeal. It is contended that the delay is caused due to the fact that their Advocate Mr.M.P.Mulgaonkar remained absent on the date of judgment. It is brought to my notice that this fact is mentioned in the judgment itself. It is contended that the said Advocate Mr. Mulgaonkar did not inform the appellant about passing of judgment. Applicant came to know about the same for the first time on 20.9.2006 when the Advocate for the claimant Mr. Dhond forwarded copy of the same to the applicants. The applicants then on 25.9.2006 asked their Advocate Mr. M. P. Mulgaonkar to forward certified copy. However, there was no co-operation from Advocate Mr. M. P. Mulgaonkar. Therefore, they requested another panel Advocate to apply for certified copy. The certified copy was obtained on 27.4.2007 and the appeal was filed on 4.5.2007. It is contended that if the delay is not condoned the grave and irreparable harm, prejudice and loss will be

caused to the applicant.

On behalf of owner reply is filed opposing application for condonation of delay. The Advocate for the appellant states that no notice of execution proceeding has yet been received by the parties. The respondents No. 1 & 2 have remained absent though served in this application. No doubt, there appears to be negligence on the part of applicants. They ought to have applied for the certified copy immediately after they were informed about passing of judgment and order on 20.9.2006. However, from the judgment, I find that there is clear finding that the vehicle in question was not insured as specific issue in this regard was framed and negatived. If there was no valid insurance then a question of fixation of liability of Insurance Company requires to be looked into as it may be unfair to fasten the Insurance company with the liability in the absence of valid insurance. As the claimants have not filed any reply I am inclined to allow the application with heavy costs. In the circumstances, the application is allowed subject to payment of costs of Rs.10,000/- which should be deposited in this Court within a period of 4 weeks. The main first appeal to be numbered and be placed for admission on 22nd November, 2007. Liberty to Respondent to withdraw costs amount when deposited.

R. S. MOHITE, J.

SMA